

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIK ROSVOLD,

Plaintiff/Counter-Defendant, Case No. 04-75009

v. District Judge Julian Abele Cook, Jr.
Magistrate Judge R. Steven Whalen

L.S.M. SYSTEMS ENGINEERING,
INC., a Domestic Profit Corporation,

Defendant/Counter-Plaintiff,

**ORDER DENYING PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT AND GRANTING RULE 37 SANCTIONS**

Before the Court is Plaintiff's Motion for Default [Docket #74], based on discovery violations by Defendants.

In general, Rule 37 provides for sanctions for failure to make disclosures or cooperate in discovery. Rule 37(b) provides for sanctions where a party fails to comply with a court order regarding discovery, including, under Rule 37(b)(2)(C), entry of default judgment where it is the defendant who has been disobedient. A motion for sanctions under this Rule is addressed to the Court's discretion. *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 643, 96 S.Ct. 2778, 49 L.Ed.2d 747 (1976); *Regional Refuse*

Systems, Inc. V. Inland Reclamation Co., 842 F.2d 150, 154 (6th cir. 1988).

As stated on the record on November 2, 2006, the Court finds that Defendants have been both uncooperative in discovery and disobedient of the letter and spirit of this Court's order of July 18, 2006. However, the Court will at this time decline to recommend the entry of default judgment under Rule 37(b). To that extent, the motion for default judgment is DENIED.

However, the Court does find it appropriate to assess Rule 37 monetary sanctions in the form of reasonable costs and attorney fees. Therefore, the Court will order that Defendants' attorneys shall, no later than November 16, 2006, remit \$2,500.00 (two-thousand five-hundred dollars) to Plaintiff's attorney.

Further, the depositions of Gail Lowe, Steve Lowe, Jr., Scot Wolfe, Rick Manser and Lou Ann DeGarmo shall be held no later than November 16, 2006. Plaintiff will provide new Notices of Depositions as to these witnesses to Defendants' counsel, as well as deposition subpoenas to Wolfe, Manser and DeGarmo. Service of the subpoenas on Defendants' counsel will be considered proper service on Wolfe, Manser and DeGarmo. Defendants' counsel will produce Gail Lowe and Steve Lowe, Jr., and will serve the subpoenas on Wolfe, Manser and DeGarmo. While the Court expects counsel to agree on mutually convenient dates and times for these depositions, they SHALL be conducted no later than November 16, 2006, and if the parties are unable to agree on dates and times, Plaintiff will notice the depositions at a time convenient to him and his counsel. All depositions may be held on the same day, unless counsel are able to agree on separate dates.

Defendant is again advised that failure to comply with this Order, or any Order of this Court, may result in the imposition of the most drastic sanctions permissible under Rule 37(b)(2), including striking Defendant's pleadings, entry of default judgment, and contempt of court sanctions.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: November 3, 2006

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on November 3, 2006.

S/Gina Wilson
Judicial Assistant